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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,170	12/30/2003	Daniel Gregorich	S63.2-11233US01	7868

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VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER	
TYSON, MELANIE RUANO	
ART UNIT	PAPER NUMBER
3731	

MAIL DATE	DELIVERY MODE
05/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/749,170	GREGORICH, DANIEL	
	Examiner	Art Unit	
	Melanie Tyson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *8 and 9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 10-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 November 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/20/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is in response to applicant's amendments received on 20 March 2007 and 13 November 2006. Corrections made to the drawings and claims are accepted.

Response to Arguments

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

2. Applicant's election with traverse of Species II in the reply filed on 20 March 2007 is acknowledged. The traversal is on the ground(s) that the embodiments overlap in scope. This is not found persuasive because Species I does not require a proximal end having unaligned second ends and aligned first ends, and a distal end having unaligned first ends with aligned second ends as required by Species II. Furthermore, Species III does not require any aligned ends as required by Species IV. Therefore, Species I and Species II do not overlap in scope, and Species III and Species IV do not overlap in scope.

The requirement is still deemed proper and is therefore made **FINAL**.

3. Contrary to applicant's remarks, claim 8 reads on Species IV and claim 9 reads on Species III. Therefore, claims 8 and 9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 20 March 2007.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-7 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (Publication No. 2002/0007212 A1) in view of Berra et al. (Publication No. 2004/0215319 A1).

Brown discloses a stent (see entire document) comprising a plurality of closed serpentine circumferential bands (for example, see Figure 10, element 820), including multiple bands connected by a plurality of nonparallel connecting elements (844) at their turns (836 and 840), a plurality of struts (820) increasing in length then decreasing in length formed from a single piece of material (for example, see paragraph 45), and a plurality of free turns (836 and 840). Figure 10 further shows at least one band (820) having a different geometry from another band (820), each band (820) having an aligned first end and a non-aligned second end, and maximum strut lengths from band

to band are the same. Brown further discloses alternate embodiments in which the second ends are aligned (for example, see Figure 3) and the non-aligned turns of two adjacent bands face one another (for example, see Figure 11). It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct a stent comprising these embodiments or any combination thereof in order to provide a stent having the right amount of flexibility for the intended use (for example, see paragraphs 10 and 11). Brown fails to disclose the struts of maximum length of the closed serpentine bands (820) are generally longitudinally aligned with one another, thus forming a longitudinal strip.

Berra discloses a stent (see entire document) comprising circumferential bands having struts of varying lengths (for example, see Figures 2A-5B). Berra teaches the struts of maximum length are generally longitudinally aligned with one another, thus forming a longitudinal strip of greater flexibility (for example, see Figures 5A and 5B). It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the stent of Brown as taught by Berra in order to prevent kinking of the device, thus providing a device that easily conforms to a body lumen (for example, see paragraphs 11 and 12).

With further respect to claims 11 and 12, Brown in view of Berra fails to disclose the connecting element has a curved portion, including a peak and a valley. Applicant disclosed the connecting element may comprise a straight element (for example, see Figure 2), which Brown in view of Berra discloses. Furthermore, it is well known in the art to provide connecting elements of different shapes. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the of connecting elements of Brown in view of Berra to obtain the invention as specified in claims 11 and 12.

With further respect to claims 13 and 16, Brown in view of Berra fails to disclose connecting elements of different lengths and maximum length struts having different lengths. It would have been an obvious matter of design choice to provide these modifications, since such modifications would have involved a mere change in size of the components. A change in size is generally recognized as being within the level of ordinary skill in the art.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Berra as applied to the claims above, and further in view of Oepen et al. (Publication No. 2002/0161428 A1). Brown in view of Berra discloses a device as described above, however, fails to disclose the struts of greater flexibility are thinner than the remaining struts of the stent. Oepen discloses a stent (see entire document). Oepen teaches struts having varying thicknesses in order to provide the stent with a varying degree of flexibility (for example, see paragraph 52). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the device of Brown in view of Berra as taught by Oepen in order to provide the stent with varying flexibility, thus making the stent more versatile (for example, see paragraph 52).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 9-5:30, Fridays 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /MT/
May 18, 2007

/Tan-Uyen Ho/
(JACKIE) TAN-UYEN HO
PRIMARY EXAMINER
5/24/07